

**STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND ETHICS COMMISSION**

In re: Joseph A. Montalbano

**Complaint Nos. 2006-4
2006-11**

ORDER

This matter having been heard before the Rhode Island Ethics Commission on September 11, 2007 pursuant to Commission Regulation 1011, and the Commission having considered the Complaints herein, the arguments of counsel and the proposed Informal Resolution and Settlement, which is incorporated by reference herein, it is hereby

ORDERED, ADJUDGED AND DECREED

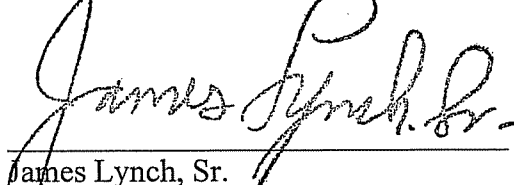
THAT, pursuant to Commission Regulation 1011(c), the Commission approves disposition of the above Complaints pursuant to said Informal Resolution and Settlement; and

THAT, the Commission incorporates by reference herein its Findings of Fact and Conclusions of Law as those set forth in the said Informal Resolution and Settlement; and

THAT, the Respondent Joseph A. Montalbano is ordered to pay a civil penalty in the amount of Twelve Thousand (\$12,000.00) Dollars.

THAT, the Respondent shall amend his 2002 Yearly Financial Statement to include the Town of West Warwick in Questions 6 and 12 pursuant to R.I. Gen. Laws § 36-14-13(d).

Entered as an Order of this Commission,


James Lynch, Sr.
Chairperson

Dated: 9/12/07

STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND ETHICS COMMISSION

IN RE: Joseph A. Montalbano : Complaint No. 2006-4
 : Complaint No. 2006-11

INFORMAL RESOLUTION AND SETTLEMENT

The Respondent, Joseph A. Montalbano, and the Rhode Island Ethics Commission (the "Commission") hereby agree to a resolution of the above-referenced matters as follows:

A. Findings of Stipulated Facts

1. The Respondent, a member and President of the Rhode Island Senate, a state elected position, was at all relevant times subject to the Code of Ethics in Government. The Respondent was originally elected to the Senate in November of 1988.
2. In his private capacity, the Respondent is, and has been, a full-time practicing attorney and member of the Bar of the State of Rhode Island since 1979, and is and has been, a duly licensed attorney. The Respondent's legal practice has been concentrated in the areas of real estate law.
3. As part of his legal practice, the Respondent has represented various municipalities in the State of Rhode Island since 1987 in real estate matters.
4. In 2003, the Respondent, in his capacity as a private attorney, represented the Town of West Warwick in real estate related matters and received payment for those services in an amount greater than \$250.00.
5. In 2004, the Respondent, in his capacity as a private attorney, represented the Town of West Warwick in real estate related matters and received payment for those services in an amount greater than \$250.00.
6. In 2005, the Respondent, in his capacity as a private attorney, represented the Town of West Warwick in real estate related matters and received payment for those services in an amount greater than \$250.00.

7. The Respondent has timely filed Yearly Financial Statements with the Rhode Island Ethics Commission for each of the years that he has been a member of the Rhode Island Senate, including the years 2003, 2004 and 2005.
8. The Respondent's Yearly Financial Statements for years 2003, 2004, and 2005 did not timely include information indicating that he had received payment for services rendered as a private attorney for the Town of West Warwick in amounts greater than \$250.00.
9. On June 1, 2006, the Respondent filed amended Yearly Financial Statements with the Commission for calendar years 2003, 2004, and 2005 indicating that he had received payment by the Town of West Warwick for services rendered in amounts greater than \$250.00 for those calendar years.

B. Travel of the Case

1. On June 19, 2006, Complaint No. 2006-4 was filed by Robert P. Arruda and James DeCesaris in their respective capacities as President and Director of Operation Clean Government, alleging that the Respondent failed to disclose on his 2003, 2004, and 2005 Yearly Financial Statement that he provided legal services to the Town of West Warwick. The Complaint alleged that the Respondent had a conflict of interest when he voted on Joint Resolution H-7935 Sub A on May 30, 2006 in the Senate Committee and on June 1, 2006 in the full Senate at a time when he was providing legal services to the Town of West Warwick. The Complaint also alleged that the Respondent failed to recuse from voting on Joint Resolution H-7935 Sub A on May 30, 2006 and June 1, 2006.
2. On October 26, 2006, Complaint No. 2006-11 was filed by Michael S. Douglas, in his capacity as Investigator for the Rhode Island Ethics Commission, alleging that the Respondent failed to disclose on his 2002 Yearly Financial Statement that he provided legal services to the Town of West Warwick.
3. On July 18, 2006, the Commission initially determined that the facts alleged in Complaint No. 2006-4, if true, were sufficient to constitute knowing and willful violations of the Code of Ethics, and a full investigation was authorized.

4. On November 28, 2006, the Commission initially determined that the facts alleged in Complaint No. 2006-11, if true, were sufficient to constitute a knowing and willful violation of the Code of Ethics, and a full investigation was authorized.
5. On January 23, 2007, the Commission found that probable cause existed to believe that the Respondent violated the Code of Ethics as to Complaint Nos. 2006-4 and 2006-11.
6. On May 15, 2007, the Commission granted the Prosecution's Motion to Consolidate Complaint Nos. 2006-4 and 2006-11.
7. An adjudicative hearing has not yet been scheduled.

C. Conclusions of Law

1. The Respondent, a member and President of the Rhode Island Senate, a state elected position, was at all relevant times subject to R.I. Gen. Laws § 36-14-1 *et seq.*, also known as the Code of Ethics in Government.
2. At all relevant times, R.I. Gen. Laws § 36-14-16 required the Respondent to file yearly financial statements with the Rhode Island Ethics Commission.
3. At all relevant times, R.I. Gen. Laws § 36-14-17 required the Respondent to report his financial activity, including as relevant here, all sources of income earned by nature of his profession, and if such income was received from a state or municipal agency, the name and address of such agency, and the nature and the services rendered.
4. At all relevant times, Commission Regulation 36-14-17001 required the Respondent to report professional services rendered to any state or municipal agency resulting in payment in excess of \$250 and the nature of the services provided.
5. With regard to Counts 3, 4, and 5 in Complaint No. 2006-4 and Count 1 in Complaint No. 2006-11, and without any admissions by the Respondent, the parties agree that after a hearing on the merits and notwithstanding Respondent's assertions that his actions were inadvertent, the Commission could find that that Respondent violated R.I. Gen. Laws § 36-14-16 by not timely filing Yearly Financial Statements for calendar years 2002, 2003, 2004 and 2005 that identified

his legal work in his private capacity as a lawyer for the Town of West Warwick, as required by R.I. Gen. Laws § 36-14-16.

6. With regard to Counts 6 and 7 in Complaint No. 2006-4 and without any admissions by the Respondent, the parties agree that after a hearing on the merits, the Commission could find that the Respondent violated R.I. Gen. Laws § 36-14-6 by not preparing written statements, in conjunction with the May 30, 2006 Committee vote and June 1, 2006 Senate vote on H-7935 Sub A, disclosing his legal work for the Town of West Warwick.

D. Mitigating Factors

In mitigation of the conduct detailed above, which are the sole representations of the Respondent and are in no way adopted by the Commission or the Prosecution, the Respondent points to the following factors which warrant the informal resolution and settlement of this matter:

1. Since his election to the State Senate in 1988, the Respondent has never been found to have violated the Rhode Island Code of Ethics.
2. Upon learning of the alleged omissions, the Respondent promptly amended his Yearly Financial Statements for the years 2003, 2004 and 2005 to include the work he performed as an attorney for the Town of West Warwick which amounted to fees in excess of \$250.
3. The documents Respondent filed on behalf of the Town of West Warwick in his representation of the Town in the years 2003, 2004 and 2005 were filed openly and publicly in the Registrar of Deeds for the Town of West Warwick, the Clerk's Office of the Superior Court of the State of Rhode Island, and in the records of the Town Council of the Town of West Warwick. Notices of foreclosure proceedings were published in newspapers identifying his representation of West Warwick.
4. The Respondent's representation of the Town of West Warwick was rendered to the Town's satisfaction and benefit and for a reasonable fee for services of the kind provided.

5. The Respondent has a past record of seeking advisory opinions from the Ethics Commission on matters that might conflict with his duties and responsibilities as a state senator.
6. The Respondent maintains that his failure to make the filings referred to in Counts 3, 4, 5, 6 and 7 of Complaint No. 2006-4, and Count 1 of Complaint No. 2006-11, was inadvertent and not a knowing and willful violation.

E. Settlement

Pursuant to the above Findings of Fact and Conclusions of Law, the Prosecution agrees to recommend and the Respondent agrees to accept the following:

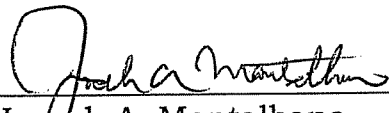
1. Counts 1 and 2 as stated in the Commission's Finding of Probable Cause in Complaint No. 2006-4 will be dismissed with prejudice because the facts would not support a finding, after an adjudicative hearing, that Respondent or any person in his family or any business associate or any business by which he is employed or which he represents will derive a direct monetary benefit or suffer a direct monetary loss, by reason of his voting on H-7935 Sub A in either the Committee or the full Senate. Consequently, the evidence would not support a finding that Respondent's votes were in substantial conflict with the proper discharge of his duties or employment, in the public interest or of his responsibilities as prescribed by the laws of this state or that he otherwise violated any provision of the Code of Ethics, other than those disclosure and filing provisions stated in paragraph (E)(2) of this settlement agreement. See R.I. Gen. Laws § 36-14-1 *et seq.* and Commission Regulation 1000 *et seq.*
2. The Commission will enter an Order and Judgment that the Respondent violated the Code of Ethics as described in Counts 3, 4, 5, 6 and 7 in Complaint No. 2006-4 and Count 1 in Complaint No. 2006-11 by failing to make the necessary filings. The Respondent shall agree to the imposition by the Commission and payment by the Respondent of a civil penalty of Twelve Thousand Dollars (\$12,000), which shall represent a

full, final and complete informal resolution and settlement.

3. Pursuant to R.I. Gen. Laws § 36-14-13(d), the Respondent will amend his 2002 Yearly Financial Statement to include the Town of West Warwick in Questions 6 and 12.



Dianne L. Leyden, Esq.
Commission Prosecutor



Joseph A. Montalbano
Respondent



Max Wistow, Esq.
Counsel for Respondent